

STATE OF GEORGIA  
COUNTY OF FULTON

AGREEMENT FOR FILEMAKER SERVICES

This Services Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, (“Effective Date”) by and between the Georgia Department of Community Affairs (hereinafter referred to as “DCA”), an agency of the State of Georgia, whose address is 60 Executive Park South, NE, Atlanta, GA 30329, and Prometheus Systems Consulting LLC (dba 360Works), (hereinafter referred to as “Service Provider”), whose address is 3700 Hedgecliff Court, Alpharetta, GA 30022, collectively referred to as the Parties.

WHEREAS, DCA desires to engage the services of Service Provider, and Service Provider desires to provide services to DCA with respect to FileMaker Upgrade as described herein; and

WHEREAS, Prometheus Systems Consulting LLC is a Limited Liability Company, which has the authority to enter into this agreement; and

WHEREAS, Prometheus Systems Consulting LLC has expertise in this area and desires to provide the services to the department.

NOW, THEREFORE, in consideration of the mutual promises contained herein, DCA and the Service Provider do hereby agree as follows:

A. DURATION OF CONTRACT

Section 1. Term.

The initial term of this Agreement shall commence on the Effective Date and shall be for a period of one (1) year from the 1<sup>st</sup> day of July, 2020, to the 30<sup>th</sup> day of June, 2021, unless terminated pursuant to the termination provisions contained in this Agreement.

Section 2. Renewal.

This Agreement shall not automatically renew in subsequent fiscal years. DCA shall have the option, in its sole discretion, to renew the Agreement for additional terms on a year-to-year basis by giving Service Provider written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal shall depend upon the best interest of the DCA, funding, and Service Provider’s performance. O.C.G.A. Section 50-5-64, this Agreement shall not be deemed to create a debt of DCA for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal

Section 3. Extension.

In the event that this Agreement shall terminate prior to entering a renewed Agreement for the identified services, DCA, with the written consent of Service Provider, may extend this Agreement to afford it a continuous supply of the identified services.

## B. DESCRIPTION OF SERVICES

### Section 1. Scope of Work.

The Service Provider agrees to provide DCA with the services described in the Scope of Work (SOW), stated in "Schedule A Scope of Work" attached hereto, during the specified term of this Agreement.

### Section 2. Non-Exclusive Rights.

The Agreement is not exclusive. DCA reserves the right to select other Service Providers to provide services similar to the services described in this Agreement during the term of the Agreement.

## C. COMPENSATION

### Section 1. Fees and Payment.

DCA shall pay Service Provider for services satisfactorily rendered in accordance with the fees and payment stated in "Schedule B Fees and Payment" attached to this Agreement.

### Section 2. Billing.

The Service Provider shall submit, on a regular basis, an invoice for services supplied to DCA at DCA's billing address. The invoice shall comply with all applicable rules concerning payment of such claims. DCA shall pay all approved invoices in accordance with applicable provisions of State law.

Unless otherwise agreed in writing by the Parties, the Service Provider shall not be entitled to receive any other payment or compensation from DCA for any services performed by or on behalf of the Service Provider. The Service Provider shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Agreement.

### Section 3. Delay of Payment Due to Service Provider's Failure.

If DCA in good faith determines that the Service Provider has failed to perform or deliver any services as required, the Service Provider shall not be entitled to any compensation until such services are performed. In this event, DCA may withhold that portion of the Service Provider's compensation which represents payment for services that were not performed. To the extent that the Service Provider's failure to perform in a timely manner causes DCA to incur costs, DCA may deduct the amount of such incurred costs from any amounts payable to Service Provider. DCA's authority to deduct such incurred costs shall not in any way affect DCA's authority to terminate this Agreement.

### Section 4. Set-Off Against Sums Owed by the Service Provider.

In the event that the Service Provider owes DCA any sum under the terms of this Agreement, pursuant to any judgment, or pursuant to any law, DCA may set off the sum owed to it against any sum owed to the Service Provider in DCA's sole discretion.

## D. TERMINATION

### Section 1. Termination for Convenience.

DCA may terminate this Agreement at any time by written notice to Service Provider when it is in DCA's best interest. Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Service Provider shall promptly submit its termination claim to DCA to be paid. If, Service Provider has any property in its termination claim belonging to DCA, Service Provider will account for the same, and dispose of it in the manner DCA directs.

### Section 2. Termination for Default.

If Service Provider fails to perform in the manner called for under this Agreement, or if Service Provider fails to comply with any other provision of the Agreement, DCA may terminate the Agreement for default. Termination shall be effected by serving a notice of termination on Service Provider setting forth the manner in which Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in the Agreement. If it is later determined by DCA that Service Provider had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Service Provider, GCA, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

### Section 3. Opportunity to Cure.

DCA in its sole discretion may, in the case of a termination for default, allow Service Provider ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Service Provider fails to remedy to DCA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Service Provider of written notice from DCA setting forth the nature of said breach or default, DCA shall have the right to terminate the Agreement without any further obligation to Service Provider. Any such termination for default shall not in any way operate to preclude DCA from also pursuing all available remedies against Service Provider and its sureties for said breach or default.

## E. CONFIDENTIAL INFORMATION

### Section 1. Access to Confidential Data.

The Service Provider's employees, agents and subcontractor may have access to confidential data maintained by DCA to the extent necessary to carry out the Service Provider's responsibilities under this Agreement. The Service Provider shall presume that all information received pursuant to the Agreement is confidential unless otherwise designated by DCA. If it is reasonably likely the Service Provider will have access to DCA's confidential information, then:

(i) The Service Provider shall provide to DCA a written description of the Service Provider's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Service Provider must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Service Provider in connection with the performance of this Agreement; and

(iv) The Service Provider shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Agreement.

(v) The private or confidential data shall remain the property of DCA at all times. Performance by Service Provider may require the Service Provider to sign a nondisclosure agreement. Service Provider understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Agreement.

## Section 2. No Dissemination of Confidential Data.

No confidential data collected, maintained, or used in the course of performance of this Agreement shall be disseminated except as authorized by law and with the written consent of DCA, either during the period of this Agreement or thereafter. Any data supplied to or created by the Service Provider shall be considered the property of DCA. The Service Provider must return any and all data collected, maintained, created or used in the course of the performance of this Agreement, in whatever form it is maintained, promptly at the request of DCA.

## Section 3. Subpoena

In the event that a subpoena or other legal process is served upon the Service Provider for records containing confidential information, the Service Provider shall promptly notify DCA and cooperate with DCA in any lawful effort to protect the confidential information.

## Section 4. Reporting of Unauthorized Disclosure

The Service Provider shall immediately report to DCA any unauthorized disclosure of confidential information.

## Section 5. Survives Termination.

The Service Provider's confidentiality obligation under the Agreement shall survive termination of this Agreement.

## F. INDEMNIFICATION

### Section 1. Service Provider's Indemnification Obligation.

The Service Provider agrees to indemnify and hold harmless DCA and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:

(i) Any breach of the Agreement;

(ii) Any negligent, intentional or wrongful act or omission of the Service Provider or any employee, agent or subcontractor utilized or employed by the Service Provider;

(iii) Any failure to comply with applicable specifications, warranties, and certifications under the Agreement;

(iv) The Service Provider's performance or attempted performance of the Agreement, including any employee, agent or subcontractor utilized or employed by the Service Provider;

(v) Any failure by the Service Provider to comply with the "Compliance with the Law" provision of the Agreement;

(vi) Any failure by the Service Provider to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Service Provider to conduct business in the State of Georgia or the United States;

(vii) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

(vii) Any failure by the Service Provider to adhere to the confidentiality provisions of the Agreement.

## **Section 2. Duty to Reimburse for Tort Claims Fund.**

To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Service Provider (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of Georgia and the terms of the Fund, the Service Provider and its insurers waive any right of subrogation against DCA, the Indemnified Parties, and the Fund and insurers participating there under, to the full extent of this indemnification.

## **Section 3. Litigation and Settlements.**

The Service Provider shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Service Provider unless approved in writing by Service Provider. No settlement or compromise of any claim, loss or damage entered into by Service Provider shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.

## **G. INSURANCE**

Service Provider shall provide all required insurance including commercial general liability insurance to insure against all losses and damages that are the result of or the fault or negligence of the Service Provider, its agents, servants, members, employees, contractors and subcontractors in their performance of the services.

## **H. BONDS.**

The Service Provider shall provide all required bonds for the services to be rendered under this Agreement.

## I. WARRANTIES

### Section 1. Construction of Warranties Expressed in the Agreement with Warranties Implied by Law.

All warranties made by the Service Provider and/or subcontractors in all provisions of the Agreement, whether or not this Agreement specifically denominates the Service Provider's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Service Provider's affirmation or promise, or is created by a description of the services to be provided to DCA shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the services provided by the Agreement. The provisions of this section apply during the term of this Agreement and any extensions or renewals thereof.

### Section 2. Conformity with Contractual Requirements.

The Service Provider represents and warrants that the services provided in accordance with the Agreement will appear and operate in conformance with the terms and conditions of the Agreement.

### Section 3. Authority to Enter into Contract.

The Service Provider represents and warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DCA.

### Section 4. Obligations Owed to Third Parties.

Service Provider represents and warrants that all obligations owed to third Parties with respect to the activities contemplated to be undertaken by the Service Provider pursuant to this Agreement are or will be fully satisfied by the Service Provider so that DCA will not have any obligations with respect thereto.

### Section 5. Industry Standards.

The Service Provider represents and expressly warrants that all aspects of the services provided or used by it shall at a minimum conform to the standards in the Service Provider's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Agreement, which shall take precedence.

## J. DISPUTE RESOLUTION

### Section 1. Disputes.

Disputes arising in the performance of this Agreement which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of

DCA. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, Service Provider mails or otherwise furnishes a written appeal to DCA. In connection with any such appeal, Service Provider shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the DCA shall be binding upon Service Provider and Service Provider shall abide by the decision.

#### Section 2. Performance During Dispute.

Unless otherwise directed by DCA, Service Provider shall continue performance under this Agreement while matters in dispute are being resolved.

#### Section 2. Claims for Damages.

Should either Party to this Agreement suffer injury or damage to person or property because of any act or omission of the Party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other Party within a reasonable time after the first observance of such injury of damage.

#### Section 3. Rights and Remedies.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the DCA or Service Provider shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### K. CONTRACT ADMINISTRATION

#### Section 1. Drug-free Workplace.

The Service Provider hereby certifies as follows:

(i) Service Provider will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement; and

(ii) If Service Provider has more than one employee, including Service Provider, Service Provider shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Agreement; and

(iii) Service Provider will secure from any subcontractor hired to work on any job assigned under this Agreement the following written certification: "As part of the subcontracting agreement with (Service Provider's Name), (Subcontractor's Name) certifies to the Service Provider that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Agreement pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

(iv) Service Provider may be suspended, terminated, or debarred if it is determined that:

(a) Service Provider has made false certification here in above; or

(b) Service Provider has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

## Section 2. Boycott of Israel.

Service Provider certifies that Service Provider is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel, as defined in O.C.G.A. 50-5-85

## Section 3. Prohibition of "Scrutinized Company" and Countries under U.S. Embargos

Service Provider certifies that Service Provider is neither currently a "Scrutinized Company" doing business in Sudan prohibited from contracting with DCA under O.C.G.A. §50-5-84 nor doing business concerning goods and services obtained from Iran, Syria, North Korea or Cuba currently under U.S. embargos pursuant to 31 C.F.R. §560.201, §542.207, §510.205, and §515.204, and agrees for the duration of this Agreement not to engage in business related to said countries.

## Section 4. Program Fraud and False or Fraudulent Statement or Related Acts.

Service Provider acknowledges that Administrative Remedies for False Claims and Statements under 31 U.S.C. §3802 applies to Service Provider's actions pertaining to this Agreement

## Section 5. Amendments.

The Agreement may be amended in writing from time to time by mutual consent of the Parties. If the Agreement award exceeds the delegated purchasing authority of DCA, then DCA must obtain approval of the amendment from the Department of Administrative Services (DOAS). All amendments to the Agreement must be in writing and fully executed by duly authorized representatives of DCA and the Service Provider.

## Section 6. Third Parties Beneficiaries.

There are no third-Party beneficiaries to the Agreement. The Agreement is intended only to benefit DCA and the Service Provider.

## Section 7. Choice of Law or Forum.

The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to DCA.

## Section 8. Parties' Duty to Provide Notice Intent to Litigate and Right to Demand Mediation.

(i) In addition to any dispute resolution procedures otherwise required under this Agreement or any informal negotiations which may occur between the Parties, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced without first giving fourteen (14) calendar days written notice to the other Party of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either Party may elect to submit the matter for mediation. Either Party may exercise the right to submit the matter for mediation by providing the other Party with a written demand for mediation setting forth the subject of the dispute. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to Agency shall not exceed five thousand dollars (\$5,000.00).

(ii) All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or employees of any mediation service, are inadmissible for any purpose (including but not limited to impeachment) in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inadmissibility notwithstanding, all written documents shall nevertheless be subject to the Georgia Open Records Act O.C.G.A. Section 50-18-70 et seq.

(iii) No Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the Parties so desire.

## Section 9. Assignment and Delegation.

The Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of DCA. For the purpose of construing this clause, a transfer of a controlling interest in the Service Provider shall be considered an assignment.

#### Section 10. Use of Third Parties.

Except as may be expressly agreed to in writing by DCA, Service Provider shall not subcontract, assign, delegate or otherwise permit anyone other than Service Provider or Service Provider's personnel to perform any of Service Provider's obligations under this Agreement or any of the work subsequently assigned under this Agreement. No subcontract which Service Provider enters into with respect to performance of obligations or work assigned under the Agreement shall in any way relieve Service Provider of any responsibility, obligation or liability under this Agreement and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Service Provider under the Agreement shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of DCA. DCA shall have the right to request the removal of a subcontractor from the Agreement for good cause.

#### Section 11. Integration.

The Agreement represents the entire contract between the Parties. The Parties shall not rely on any representation that may have been made which is not included in the Agreement.

#### Section 12. Not a Joint Venture.

Nothing in the Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the Parties thereto. Each Party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived here from. Neither Service Provider nor any of Service Provider's agents, servants, employees, subcontractors or Service Providers shall become or be deemed to become agents, servants, or employees of DCA. Service Provider shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No Party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another Party to the Agreement.

#### Section 13. Joint and Several Liability.

If the Service Provider is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Agreement, and for any default of activities and obligations.

#### Section 14. Supercedes Former Contracts or Agreements.

Unless otherwise specified in the Agreement, this Agreement supersedes all prior Contracts or Agreements between DCA and the Service Provider for the services provided in connection with this Agreement.

Section 15. Waiver.

Except as specifically provided for in a waiver signed by duly authorized representatives of DCA and the Service Provider, failure by either Party at any time to require performance by the other Party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent right to require performance or to claim a breach.

Section 16. Notice.

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Agreement on behalf of the Party at the address identified by DCA. Each such notice shall be deemed to have been provided:

- (i) At the time it is actually received; or,
- (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- (iii) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.
- (iv) From time to time, the Parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other Party and as provided herein.

Section 17. Cumulative Rights.

The various rights, powers, options, elections and remedies of any Party provided in the Agreement shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either Party by law, and shall in no way affect or impair the right of any Party to pursue any other equitable or legal remedy to which any Party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

Section 18. Severability.

If any provision of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Agreement. Further, if any provision of the Agreement is determined to be unenforceable by virtue of its scope, but may be made enforceable by a

limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Parties to amend, modify, eliminate, or otherwise change any part of this Agreement shall not affect any other part of the Agreement, and the remainder of this Agreement shall continue to be of full force and effect.

#### Section 19. Time is of Essence.

Time is of the essence with respect to the performance of the terms of the Agreement. Service Provider shall ensure that all personnel providing services to DCA are responsive to DCA's requirements and requests in all respects.

#### Section 20. Authorization.

The persons signing this Agreement represent and warrant to the other Party that:

- (i) It has the right, power and authority to enter into and perform its obligations under the Agreement; and
- (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Agreement and the Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

#### Section 21. Successors in Interest.

All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

#### Section 22. Record Retention and Access

The Service Provider shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to DCA throughout the term of the Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Service Provider shall permit the Auditor of the State of Georgia or any authorized representative of DCA, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Service Provider relating to orders, invoices or payments or any other documentation or materials pertaining to the Agreement, wherever such records may be located during normal business hours. The Service Provider shall not impose a charge for audit or examination of the Service Provider's books and records. If an audit discloses incorrect billings or improprieties, DCA reserves the right to charge

the Service Provider for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

#### Section 23. Solicitation.

The Service Provider warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency.

#### Section 24. Public Records.

The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.

#### Section 25. Debarred, Suspended, and Ineligible Status.

Service Provider certifies that the Service Provider and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Service Provider will immediately notify DCA if Service Provider is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended, and Ineligible Service Providers by a federal entity.

#### Section 26. Use of Name or Intellectual Property.

Service Provider agrees it will not use the name or any intellectual property, including but not limited to, DCA trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of DCA.

#### Section 27. Lobbying

warrants and represents that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of Service Provider, to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any loan, the entering into any cooperative agreement.

(2) If any funds other than federally appropriated funds have been paid or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress, or any employee of a Member of Congress in connection with this Agreement, Service Provider shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with the applicable laws and regulations.

(2) If Service Provider is an entity other than an individual, the entity must certify that a drug-free workplace will be provided for the Service Provider's employees during the performance of any contract resulting from the Request for Qualifications.

#### Section 28. Certification Regarding Sales and Use Tax.

By executing the Agreement the Service Provider certifies it is either (a) registered with State of Georgia Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a “retailer” as defined in O.C.G.A. Section 48-8-2. The Service Provider also acknowledges that DCA may declare the Agreement void if the above certification is false. The Service Provider also understands that fraudulent certification may result in DCA or its representative filing for damages for breach of contract.

#### Section 29. Taxes.

DCA is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor’s employee’s wages. DCA is exempt from State and Local Sales and Use Taxes on the services. The Exemption Certificates will be furnished upon request. Service Provider or an authorized subcontractor has provided DCA with a sworn verification regarding the filing of unemployment taxes or persons assigned by Service Provider to perform services required in this Agreement which verification is incorporated herein by reference.

#### Section 30. Delay or Impossibility of Performance.

Neither Party shall be in default under the Agreement if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Service Provider. If delay results from a subcontractor’s conduct, negligence or failure to perform, the Service Provider shall not be excused from compliance with the terms and obligations of the Agreement.

#### Section 31. Limitation of Service Provider’s Liability to DCA.

Except as otherwise provided in this Agreement, Service Provider’s liability to DCA for any claim of damages arising out of this Agreement shall be limited to direct damages and shall not exceed the total amount paid to Service Provider for the performance under this Agreement.

(i) No limitation of Service Provider's liability shall apply to Service Provider's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Service Provider's personnel. Service Provider hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Service Provider's personnel. Service Provider further agrees that equipment transported by Service Provider personnel in a vehicle belonging to Service Provider (including any vehicle rented or leased by Service Provider or Service Provider's personnel) shall be deemed to be in the sole care, custody, and control of Service

Provider's personnel while being transported. Nothing in this section shall limit or affect Service Provider's liability arising from claims brought by any third Party.

Section 32. Obligations Beyond Contract Term.

The Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Agreement. All obligations of the Service Provider incurred or existing under the Agreement as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Agreement.

Section 33. Counterparts.

The Parties agree that the Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

Section 34. Further Assurances and Corrective Instruments.

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Agreement.

Section 35. Transition Cooperation and Cooperation with other Service Providers.

Service Provider agrees that upon termination of this Agreement for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to DCA or another Service Provider. The Service Provider shall provide full disclosure to DCA and the third-Party Service Provider about the equipment, software, or services required to perform services for DCA. The Service Provider shall transfer licenses or assign agreements for any software or third-Party services used to provide the services to DCA or to another Service Provider.

Further, in the event that DCA has entered into or enters into agreements with other Service Providers for additional work related to services rendered under the Agreement, Service Provider agrees to cooperate fully with such other Service Providers. Service Provider shall not commit any act, which will interfere with the performance of work by any other Service Provider.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures on the date first written above.

PROMETHEUS CONSULTING  
SYSTEMS LLC

By: 

Name: Sterling Rouse

Title: Project Manager

GEORGIA DEPARTMENT OF  
COMMUNITY AFFAIRS

By: 

G Christopher Nunn (Sep 3, 2020 14:30 EDT)

Name: G. Christopher Nunn

Title: The Commissioner

## **Schedule A**

### **SCOPE OF WORK**

360Works provides a portfolio of proprietary products to enhance our existing FileMaker implementation. These unique products allow FileMaker and other database applications and technologies to work together to provide a more complete solution for grants management, document management, and data integration.

These products include:

Data Integration, Migration and Synchronization Products, including:

- MirrorSync 360Works, a migration and data integration tool that allows the FileMaker server to migrate and synchronize data with our SQL Server Reporting Data Warehouse, ScriptMaster General-purpose, modular plug-in that comes with modules for SQL access, file manipulation, URL and network utilities, Web services, shell scripting, event/script triggering, and many others.
- Web Services Manager publishes FileMaker scripts such as XML Web Services which makes it easy to integrate with FileMaker from virtually any other system, programming language, operating system, or hardware.

Grant Applications, Document Management, and Reporting Products including:

- SuperContainer, DCA's Online Grant Application Solution (HSONline) which integrates 360Works SuperContainer to provide archiving and document management, allowing for search, view, upload, and download of documents to be completed securely.
- RemoteScripter, which triggers a workflow to generate a composite PDF of the submitted grant application and automatically uploads it to SuperContainer
- Scribe, is a text processor for working with PDF or Word documents and can convert text input into data fields in the FileMaker database.
- PDF Plug-In allows extensive PDF manipulations including merging pages, manipulating bookmarks, and filing in PDF forms.

**Schedule B**  
**FEES AND PAYMENT**

Total Contract Amount: \$53,572.44

Prometheus Systems Consulting LLC (dba 360Works) shall invoice the Georgia Department of Community Affairs (DCA) monthly for all services provided. Work completed shall be detailed on the invoice.

The Georgia Department of Community Affairs (DCA) shall remit payment within 30 calendar days after acceptance and approval of invoice. DCA will notify Prometheus Systems Consulting LLC (dba 360Works) of any issues with an invoice within 7 calendar days of receipt.






# 360Works Contract 20-21

Final Audit Report

2020-09-03

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